

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Michael D. Goins,)	C/A NO. 4:13-412-CMC-TER
)	
Plaintiff,)	
)	OPINION and ORDER
v.)	
)	
Elbert Pearson, SCDC State Investigator;)	
Sgt. C. Long; Corporal Council; John One)	
Doe; John Two Doe; Each in their own)	
official and their individual capacities,)	
)	
Defendants.)	
_____)	

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Thomas E. Rogers, III, for pre-trial proceedings and a Report and Recommendation ("Report"). On March 28, 2013, the Magistrate Judge issued a Report recommending that the complaint be dismissed without prejudice and without issuance and service of process as being duplicative of DSC C/A 4:12-3494-CMC-TER. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections to the Report on April 11, 2013.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo*

determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After conducting a *de novo* review as to Plaintiff's objections to the Report, and considering the record, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

Plaintiff contends that he did not mean to file a new civil action when he submitted this complaint to the Clerk for filing; that he was attempting to amend the previous complaint he had submitted. Indeed, as noted by the Magistrate Judge, the pleadings are largely identical. However, Plaintiff did not provide any accompanying information which might alert the Clerk that this matter was to be deemed an amended complaint, and he checked "No" in response to the question "Have you begun other lawsuits . . . dealing with the same facts involved in this action . . . ?" *See* Compl. at 1 (ECF No. 1, filed Feb. 19, 2013).

As Defendants have not yet filed an answer in DSC C/A 4:12-3494-CMC-TER, Plaintiff is directed to amend his complaint in that case, if he so chooses, prior to the time Defendants' answer is due to be filed.

This matter is dismissed without prejudice and without issuance and service of process on Defendants.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
April 15, 2013